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Wm Cameron Forbes, Esq.

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STATEMENT OF M. C. BRUSH

PRESIDENT OF THE

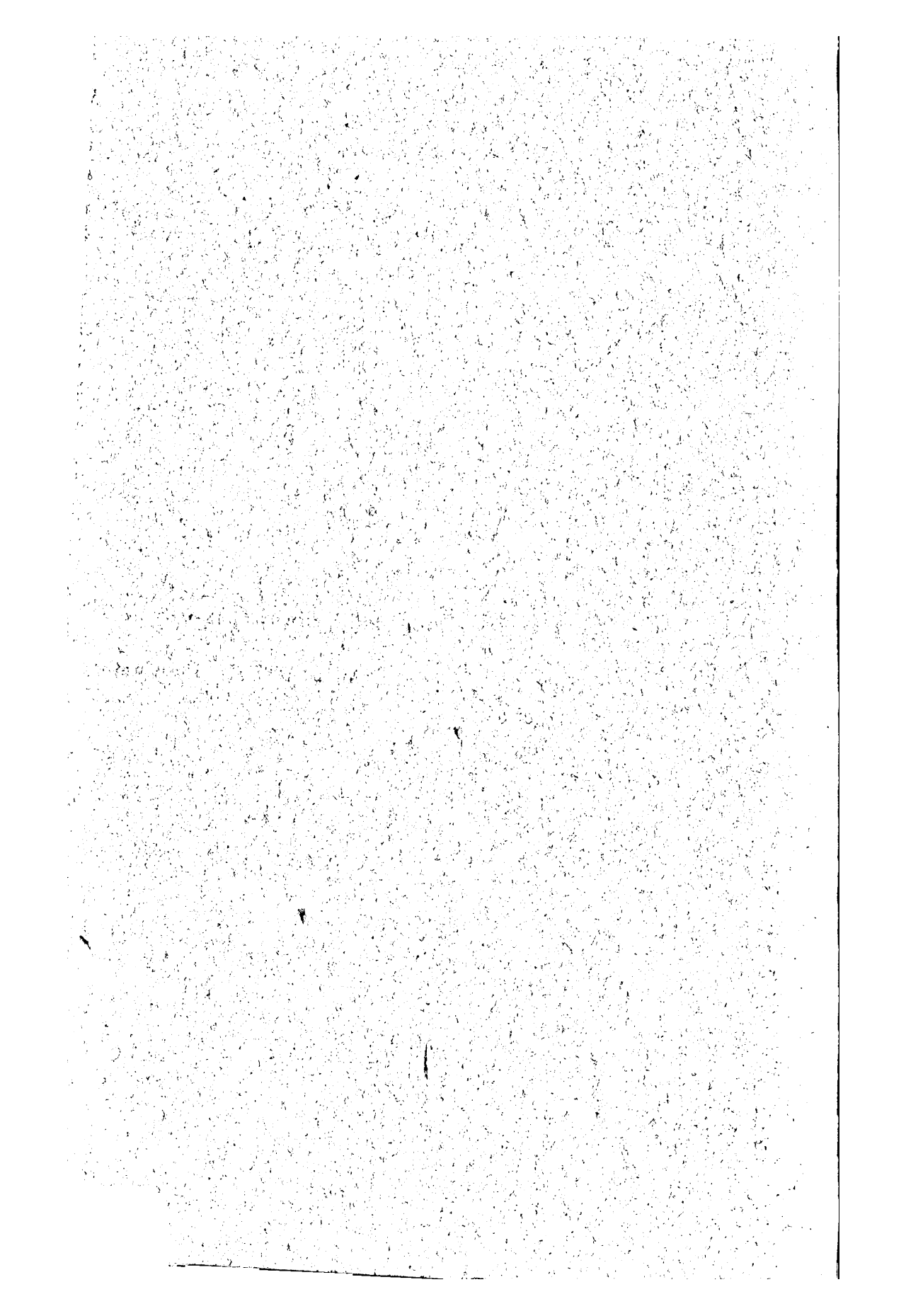
BOSTON ELEVATED RAILWAY COMPANY

BEFORE THE

STREET RAILWAY INVESTIGATION COMMISSION OF THE MASSACHUSETTS LEGISLATURE

SEPTEMBER 6, 1917

SATISFACTORY SERVICE AND SOUND SECURITIES



STATEMENT OF M. C. BRUSH

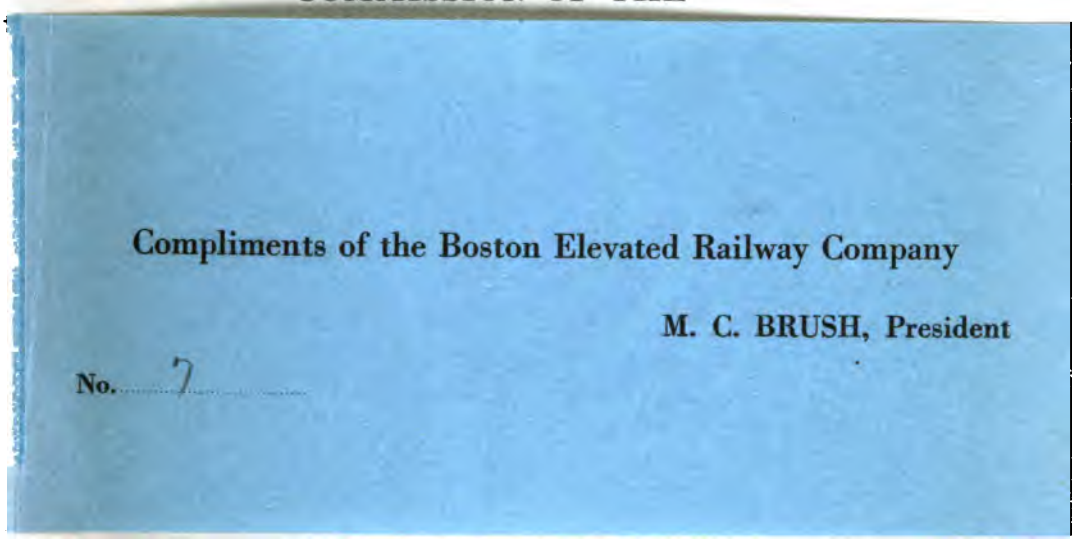
PRESIDENT OF THE

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STREET RAILWAY INVESTIGATION

COMMISSION OF THE



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I. INTRODUCTION

1. Duties of the Special Commission

It would seem that the scope of the work and authority of your Honorable Commission is extremely broad, when it is realized that among other things **you are to investigate and study the various problems relating to the control, supervision, regulation, ownership, operation, taxation, capitalization, finance, management, powers, duties, liabilities, development, freight and express, public ownership, etc., of street railways.**

The fundamental principle on which the laws and policies for our public utilities were founded was supposed to be that capital honestly and prudently invested was entitled to a fair income return. The laws as they now exist so fail to result in such a return to the stockholders of nearly all of the street railway companies of the state that most of them are now being driven toward inevitable bankruptcy. I sincerely hope that this Honorable Commission will find it possible and wise to recommend such changes in the laws and the administration thereof that they will accomplish the purposes they are intended to serve by providing for the establishment and readjustment from time to time of tariffs to accord with the changing conditions of wages and the changing prices of material, and to make possible not only the payment of a fair interest return upon the investment, but the gradual accumulation in normal times of a reasonable surplus available to meet emergencies or contingencies. **The average investor can be induced to supply capital on the basis of a moderate income return only when there is some surplus above fair dividend requirements to serve as a guarantee to the continuance of the dividends, and such a surplus, being invested in property on which no dividends are paid, increases the Company's ability to furnish good facilities and to meet the demands of the community for service at reasonable rates.**

I should like, if possible, to present to your Honorable Commission such facts in regard to the present situation as will tend to lead to the following conclusions in regard to street railways in the Commonwealth:

1. That substantially all capital stock has been issued and the funds invested in the property under public supervision and is entitled to earn a fair return.

2. That the imperative needs of a community are so dependent upon its transportation facilities that it is absolutely impossible for the one to succeed and not the other.

3. That comparatively few changes are necessary in the present statutes.

4. That it is absolutely essential that some definite, constructive action be taken in the immediate future in order that good service may be assured to the public.

5. That the properties must either be owned and operated by the State, or some division thereof, such as a district, a city, or a town, in which case private capital must purchase the public bonds in order to purchase the properties, or else be privately owned and operated, in which case investors must be assured of such a continued policy of protection as will warrant a continuance of improvements and extensions from private capital. In either case a fair return directly from the business should be earned upon the investment, for even if publicly owned the property must be self-supporting or else any deficits from operation must be made up from taxes.

6. That in the last analysis the car-rider receives full benefit from improved credit of the Company to the extent that such improved credit permits the Company to secure money for additions and extensions and to refund indebtedness already incurred, at a low rate of interest. The more successful the Company the better its credit, and the better its credit, all other things being equal, the lower the fares, or the better the facilities, or both.

The Commonwealth has had many commissions for several years past on all details of the question of street railroading.

As an indication of how effort has been made by the use of commissions to meet in some specific cases the transportation problem, under the provisions of Chap. 108, Resolves of 1913, providing for the investigation of the street railway service furnished by the Boston Elevated Railway Company and the Bay State Street Railway Company in the metropolitan district, a joint report was made by the Public Service Commission and the Boston Transit Commission, and in the last part of the report it states: "The Joint Commission therefore respectfully recommends that to some public authority be committed a thorough and fundamental consideration of the whole metropolitan transportation problem."

The next year Chap. 149 of the Resolves of 1914 called for a continuation of the report asked for by the Resolves of 1913, and the Public Service Commission reported, and in the last paragraph of that report stated: "The special duty of considering these rapid transit plans can be delegated to some other public body, such as the Boston Transit Commission." Then in 1916 in the Resolves of that year, Chap. 158, provision was made for a special commission to consider the financial condition of the Boston Elevated Railway Company reporting in Senate 344, the ninth recommendation of which read: "The Commission recommends that the Public Service Commission . . . be directed to make a thorough investigation of the affairs of the Boston Elevated Railway Company," and that investigation is now being carried on. Further, the Commonwealth has had a Public Service Commission or its predecessor, the Railroad Commission, since 1869, or for forty-eight years.

As to the necessity for something being done to remedy the general street railway situation in the Commonwealth, Mr. Warren has given you figures which I will not endeavor to repeat. Suffice it to say that you gentlemen are considering the conservation of an investment of over $200,000,000 in Massachusetts street railways, belonging to many thousands of stockholders, bondholders, and savings-bank depositors, almost all of whom are citizens of the Commonwealth, and the providing of future transportation service to about eight hundred million passengers annually, as well as employment for about 25,000 persons.

The street railway companies of this State are in a serious financial condition which if not speedily corrected threatens hardship on the communities they serve and serious disaster to those who have invested in their securities. With few exceptions, the companies are unable to give service that is thoroughly satisfactory either to themselves or to their patrons. In most cases it is impossible to maintain the property at the standard that either good service or good business requires. Nearly half of the companies in this State are paying no dividends, and some of those that are have either been obliged to reduce them or are facing that necessity with a fair prospect that soon the payment of dividends will be impossible. Few if any Massachusetts street railway companies can secure new capital at this time by issuing stock, and the ability of most of them to secure funds by issuing bonds is growing less daily.

The companies in the Commonwealth are neither burden-shirkers nor avaricious profit-seekers. They are public servants eager to perform their full and proper duty and asking only that the performance of that duty be made possible. Nothing more is sought and nothing else should be permitted.

We have to-day on the statute books a great volume of laws governing the street railway industry, practically all contingencies are provided for, but all the laws in the world will not remedy the situation unless the basis on which the industry is founded is sound and right. In order, therefore, to consider this question we must get down to fundamental principles.

We must create a reciprocal relationship between the car-rider and the stockholder that will assure an equitable deal to both, and at the same time encourage the development of good transportation facilities, and create a spirit of intensive earnestness and enthusiastic energy in the personnel who make up the thousands devoting their efforts to the electric railway industry of the Commonwealth.

2. Present Problem

The question has naturally arisen whether this difficult and deplorable condition in which the street railways find themselves is unique to Massachusetts, and if so, why. The answer to the first part of the question is "No." It is not generally realized that the electric railway system in the United States has a capitalization of something more than five billion dollars, employs approximately 300,000 persons, has gross earnings of approximately $600,000,000; that the passengers carried are about ten times the number carried by the steam railroads; and that the electric railway industry has been in existence only slightly over twenty-five years. In 1890 there were about 1,250 miles of electric railway track in the United States, while to-day there are more than 40,000 miles. Up to a few years ago the growth of electric railways was extremely rapid, but, apparently due to a realization that the returns on such investments were steadily growing less, there has been a marked falling off in the flow of capital to this industry and "an increasing reluctance on the part of capital to accept further risks and inadequate return."

Some appreciation can therefore be had of the magnitude of the street railway industry and, as an evidence of the fact that street railway managers in Massachusetts are not alone in their problem, petitions are now pending before the Public Service Commission of New York State for an increase from 5 to 6 cents for twenty-eight street railway companies. (See Appendix A.)

Further, in Eastern Pennsylvania several companies have already increased their fares. (See Appendix B.)

Since 1914 to June 1, 1917, increases in street railway fares have occurred in twenty-one States and the Dominion of Canada. In 68 cases fares have been raised. Among the cases in the Dominion of Canada there are three municipally owned lines.

Some appreciation of the increased cost of materials used by street railways may be had from the following table:

COMPARATIVE COST OF MATERIAL 1914—AUGUST 1917

Material	*1914*	*1917*	*Increase*
Rails, Girder	$38.80 G.T.	$52.80 G.T.	36%
Rails, Tee	33.94 "	44.36 "	30%
Rail Joints	38.80 "	72.80 "	87%
Switches, Track	149.40 each	394.00 each	164%
Spikes, Track	.0157 lb.	.0514 lb.	227%
Tie Plates, Steel	.0145 "	.0495 "	241%
Bolts, Machine	85%–2½% disc.	50% disc.	241%
Wheels, C. I. (Exchange Basis)	$0.66 cwt.	$1.325 cwt.	100%
Steel Bars (Boston Stock)	.0165 lb.	.0510 lb.	209%
Journal Boxes	3.50 each	11.25 each	221%
Springs, Car	.0205 lb.	.0580 lb.	183%
Gears	11.00 each	20.52 each	87%
Pinions	3.65 each	6.66 each	82%
Copper Trolley Wire	.165 lb.	.39 lb.	136%
Copper Cable 2,000,000 C.M.,	1,322.49 M. ft.	3,228.00 M. ft.	144%
Sand	.50 cu. yd.	1.00 cu. yd.	100%
Stone, Crushed	.97 ton	1.55 ton	60%
(Motor, Control & Ltg. Equip. for Surface Cars)	2,450.00	5,500.00 (Market price)	124%
Trailer Car Bodies and Trucks	2,199.00 (Purchased 1915)	5,400.00 (Market price)	145%

(See Appendix C.)

3. Use of Private Capital

In studying or treating with the street railway situation, local or national, we must constantly keep before us the fact that **substantially the whole industry has been built up by private capital invested by private citizens on the assumption that they would receive at least a fair return on their investment, or surely would not be prevented from endeavoring to so manage their property as to receive a fair return.**

Had these street railways been constructed with public funds, the bonds issued by the public authorities would have borne a guaranteed interest, and it is fair to presume that the rate would have been equal to or in excess of what holders are now receiving on securities of such street railways

as are now meeting their obligations; and certainly would be in excess of the average returns which holders of these securities are now receiving when you consider that many of the companies are unable to pay any dividend whatever, and some of them are not even meeting their fixed charges.

If the State or a municipality owned a street railway it would surely not result in any reduction in wages, and, equally so, it is fair to presume that the purchase of material could not be more keenly guarded by public officials than it is by private interest.

Entirely aside, however, from whether public ownership is or is not the best solution, it is not likely that, with the present war situation, the community would deem it expedient to invest in some $200,000,000 worth of bonds for this purpose. It would appear, therefore, that, regardless of one's sentiment, for the present at least, the street railway industry must be financed by private capital, and it would be extremely unfortunate to permit a continuance of the present deplorable condition of street railways.

Mr. Daniel Willard, president of the Baltimore and Ohio Railroad, who was appointed by President Wilson to serve as chairman of the Advisory Committee of the Council of National Defense, in an address before the Boston Chamber of Commerce, June 12, 1913, said:

"It has come to be understood that the railroad is a semi-public institution, and that it is expected to treat, and must treat, all with equal fairness. The executives in charge of the railways by virtue of what has come about, occupy the dual position of semi-public officers, charged with the duty of operating the properties in harmony with the laws of the country, and also with the equally important duty of trustee, representing those whose money is invested in the enterprise. It should be remembered that although the railroad is considered a public utility with important public functions to perform, it nevertheless owes its very existence to the employment of private capital, and Mr. Commissioner Prouty has well said in one of his public addresses that 'we can provide by legislation for the sort of cars which a railroad shall use, and the rates which it shall impose; we cannot by legislation force one single dollar of private capital into railroad investment against its will.'"

4. Unique Position of the Boston Elevated Case

The Boston Elevated Railway Company occupies a more or less unique position at the present time, differing from that of any other company in the Commonwealth.

On May 22, 1916, the Company requested Governor McCall to request the Legislature to make provision for the appointment of a commission to report to the next General Court as to whether or not in its opinion "it is advisable for the State to take any action, either by way of legislation or otherwise, with a view to enabling the company to obtain a net revenue adequate for its corporate and public purposes and if so what action," and further suggested the propriety of including the Public Service Commission and the Transit Commission as a part of any commission to be provided for by the Legislature.

The Governor transmitted this communication to the Legislature on May 23 and recommended that "you establish a commission of which the members of the two commissions shall also be members," etc., "to inquire into all matters set forth in the communication and make report thereon."

The Legislature of 1916 passed a resolve appointing a commission of nineteen of which the Lieutenant-Governor was chairman. That commission made a report to the Legislature making certain recommendations, including the purchase of the Cambridge Subway by the Commonwealth and that the Public Service Commission might make such further investigation as it deemed necessary to ascertain whether by improved methods and practices the net income of the Company could be increased. The Commission are to report to the next General Court about February first.

During the last hours of the session the Governor sent a message to the Legislature a portion of which reads as follows:

"The portion of the bill to which I could not bring myself to give my approval provides in brief for the purchase by the Commonwealth of the Cambridge Subway, its appurtenances and connections. . . . For the reasons which I gave in the veto of the bill relating to the improvement of the Merrimack River I should feel constrained to withhold my

approval from the authorization of the issue of the bonds provided for in the pending bill.

"But quite aside from considerations growing out of the present crisis I should feel that it was an unwise policy to use the credit of the Commonwealth to purchase the property of the Boston Elevated Railway Company. It is in my opinion likely that the purchase of the subway instead of settling the difficulties of that Company would but involve the Commonwealth and unless further legislation were had, might force it to take over the whole Boston Elevated Railway system.

"Further if the Commonwealth should purchase the means of transportation between Boston and Cambridge, how would it be possible for it to refuse to provide a system of transportation between Worcester and Springfield, or Springfield and Northampton? Why should it not lend its credit to the Bay State Street Railway Company or to the steam roads of the Commonwealth? The policy upon which this bill would lead the Commonwealth to embark would almost inevitably be followed by similar ventures, by an enormous increase in our public debt and in my opinion by the creation of conditions which we should not care to contemplate.

"The transportation companies should be required to give rates that are just and reasonable and equal to the public. On the other hand they should be permitted to receive rates which would enable them to pay reasonable wages to their employes, to operate their property efficiently, and to yield a return upon investments honestly made. Less than that would not pay for the fair cost of service. Such a policy is in my opinion necessary in order to do justice to the people who use the roads and to the companies which own them, and vital to their proper equipment and efficient operation."

Both branches of the Legislature then passed the bill with the Cambridge Subway section out, as Special Act 373, and this was signed by the Governor.

The Public Service Commission has appointed Mr. John A. Beeler, formerly vice-president of the Denver Tramways, to carry on their investigation. He is now at work with a staff of assistants carefully investigating and studying all of the details of the Company's affairs with a particular view to ascertaining whether by improved methods and practices, with due regard to safety and efficiency of service, the net income of the Company can be increased.

The Boston Elevated Railway Company is operating under a charter which makes it impossible without a special act of the Legislature to modify the present rate of fare. In this respect it is situated differently from other street railways in the Commonwealth, for in the case of all other companies the adjustment of fares under the present laws is entirely under the jurisdiction of the Public Service Commission.

In view of the fact, therefore, that the Public Service Commission is now considering the Boston Elevated Company's case, I assume that your Honorable Commission does not desire any particular detail in regard to the Elevated case or that of any other particular company, but does desire to know whether we have any ideas which might be of service to your Commission in the discharge of your duties, as applied to street railways generally in the Commonwealth. (See Appendix D for detail of progress of Boston Elevated Railway case.)

5. The Public Service Commission, its Powers and Responsibilities

Without endeavoring to quote the detail of the supervision exercised by the public authorities over the affairs of street railways or give the detail of the duties of the Public Service Commission, it may be said that in general the Commission has complete control over the issue of capital stock and bonds; has the right to inquire into the rates, charges, regulations, practices, equipment, and service of common carriers; examine all books, contracts, records, documents, papers, and memoranda; it provides for an annual audit; establishes systems of forms; prescribes forms of records to be kept; it may enter upon premises of any common carrier for any purpose consistent with its duties, inspect the property, equipment, buildings, plants, factories, carhouses, etc.; investigate and determine the fair value for any purpose of all property of any common carrier, and when it shall be of the opinion that any regulations, practices, equipment, appliances, service, or charges are unjust, unreasonable, unsafe, improper, or inadequate it shall determine proper regulations, etc., to be used and

rates to be charged. It has complete control over the accounting of the Company, the right to require such detailed report as it desires of all expenditures, and has practically complete control over the extent, quality, and character of the service rendered. Each year every company in the State makes a return to the Commission, giving all details of income and expenditures and since November 24, 1913, each company files with the Commission every three months sworn statements of all detailed payments affecting publicity, all legal payments, all contracts for advertising, and all details of items charged under general expense, together with the name and address of person, firm, or corporation to whom the payments have been made, as well as the nature and character of the service rendered.

Section 23 of the Public Service Commission Act provides:

". . . The Commission shall **determine** the just, reasonable, safe, adequate and proper **regulations** and **practices,** thereafter to be in force and to be observed, and the **equipment, appliances and service** thereafter to be used and shall **fix** and **prescribe** the same by order to be served upon every common carrier to be bound thereby. . . . It shall be the duty of every such common carrier to **observe and obey every requirement** of every such order so served upon it, and to do everything necessary or proper in order to secure **absolute compliance** with and observance of every such order by all its officers, agents and employees."

The section which governs regulation of fares reads as follows:

"SECTION 22.—**Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates,** fares or charges or any of them demanded, exacted, charged or collected by any common carrier now or hereafter subject to its jurisdiction, for any services to be performed within the Commonwealth, **or the regulations or practices of such common carrier affecting such rates, are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, or that the rates, fares or charges or any of them chargeable by any such common carrier are insufficient to yield reasonable compensation for the service rendered and are unjust and unreasonable, the commission shall determine the just and reasonable**

rates, fares and charges to be charged for the service to be performed, and shall fix the same by order to be served upon every common carrier by whom such rates, fares and charges or any of them are thereafter to be observed."

For the Commissioners to pass intelligently upon all of these details for all the transportation companies and the telephone company in the Commonwealth is a tremendous task.

II. PRESENT SITUATION

1. Causes

With an elaborate system of laws for the purpose of covering each and every detail of the street railway industry, and with a long list of able citizens in the role of railroad commissioners and public service commissioners the question naturally is asked how the street railways have gotten into their present unfortunate condition.

Among the causes are:

1. In most cases the five-cent fare was never ample to provide necessary service, sufficient revenue to properly care for depreciation and obsolescence, a fair return on the money invested, and a reasonable surplus for emergencies.

2. In endeavoring to create and maintain good terms with the public, unwise and improvident concessions were granted. There have been too many cases of doing this, that, or the other thing for expediency sake. In this respect the companies have erred where they would not have erred before a court, for before a court of law they would have presented their evidence, making as strong a case as they could and it would be unusual for them to agree to do this, that, or the other thing with the hope of keeping and maintaining a kindly relation between their attorney or representative and the court or jury. Without any disrespect whatever, but with a full appreciation of human nature, the Public Service Commissioners themselves must necessarily from time to time make decisions on the grounds of expediency rather than on the grounds of merit, and this, too, is not conducive to the best interests of all concerned.

Further, the companies in many cases have been afraid to stand up and state what was right and what was wrong.

3. At the time of the original creation of commissions for supervision of railroads and railways it was believed that rates of fares and of interest were as high as they probably ever would have to be; that with improved methods and practices, economies would result which would permit of the reduction of rates; and that supervision would prevent wild-cat financing and unnecessary duplication and competition of transportation companies. It was always believed that with the growth of communities rates could properly be reduced, but it has been found in many cases by actual experience that after a community reaches a certain degree of development the kind of service necessary requires larger investment per passenger carried than for service when the community was smaller. The minds of several years ago did not conceive of the tremendous increases in the costs of labor and material and the general situation which has resulted in the increased cost of money.

4. The economic situation is always elastic, but the law is rigid. The street railway situation is constantly changing, but the present law providing for the supervision of railways is so rigid that the system fails to be sufficiently flexible to promptly and adequately respond to the varying conditions.

2. Present Procedure

Under the present system, when a street railway company deems it necessary to revise its tariff it must file with the Commission its new rates and then the Commission must hold public hearings after which it can authorize such of the changes or such portions of the changes as it deems expedient.

No matter how self-evident the necessity for the changes may be, none can be made until there have been hearings, special examinations, and investigations, and then only such portion of the request is granted as the Commission may think proper, basing its finding upon specific evidence of the company's actual past experience and proof. Of course the increase cannot be retroactive, and therefore from the time the necessity exists until the close

of the hearings and the order of the Commission is issued the earnings must be insufficient and the return or service suffer.

In the Bay State Rate case the Massachusetts Public Service Commission said with respect to the burden of proof:

"It is sufficient to say that in a case like this the company must satisfy the Commission that additional net income is needed in order that a fair return may be earned upon the capital honestly and prudently invested; it must satisfy the Commission that the needed income cannot be secured through more efficient management and operation; and it must further satisfy the Commission that there is at least a reasonable prospect that the change in fares desired will result in an increase in revenue and in no larger increase than is reasonably needed. No presumption exists with respect to any question of fact."

The entire case rests upon the proof by the company that in each and every detail of its management it has exercised the very best judgment, that no one else could possibly have done better; and it must demonstrate by actual figures that the company has already at least commenced to fail to earn sufficient net income to properly care for the interests of its passengers and to keep its business so successful as to invite the money needed for improvements and additions.

The company, to secure the approval of the Commission, must prove conclusively by actual figures that such increase in rates is absolutely essential. **In order to secure such absolute figures as will justify an increase under the present system, the company must necessarily have previously failed to earn a reasonable return. It is inherent, therefore, in the present system, that, instead of keeping a street railway successful and healthy, it first must become actually unsuccessful and ill before any remedy can be secured.** Instead, therefore, of accomplishing those things which are essential to keep railway properties in such a successful condition as to insure good transportation, the present system requires that there must be an unsuccessful railway before the Public Service Commission can justify an effort to bring it back to a proper condition.

It is very evident that the system drives away the necessary citizen who can provide the funds to increase and improve transportation facilities, for he realizes that even under the most skilful operation of the present system, in order to justify the Commission to take any action which would insure a fair return, there may be a period when he will not receive proper interest, a period for which no future increase can possibly make any provision.

The Company at the bar is considered "guilty" unless proved otherwise. Manifestly this system fails for many reasons. In the first place, the investor is always at first the plaintiff, but immediately upon making his plea he becomes the defendant. Regardless of whether the company has employed the best talent there is, to work out efficient details of management, the Commission's opinion is final against such judgment and the Company is considered in error unless it proves otherwise to the Commission's own satisfaction.

Further, immediately upon the filing by the company of a revised tariff all parties affected are notified and until they have all had ample time to endeavor to thoroughly familiarize themselves with all the details of the business, the authority for the increase must be withheld, and in the mean time the company struggles along endeavoring to do the impossible and continues to sell its goods at less than cost.

The Public Service Commission has in a number of cases granted increases in fares, but in substantially each case a considerable period of time has necessarily elapsed between the time of the petition by the company and the time authority has been granted by the Commission for any portion of the increase. Under the wording of the present act such suspension of revised tariffs and elapse of time is necessary, but in all such cases the company in the first place, in order to prove its case, was compelled to have let occur a condition of earnings insufficient to properly maintain its credit before it petitioned for increases. In addition to such time as had already elapsed, therefore, the suspension of the suggested tariff by the Commission to permit the remonstrants to prepare their case merely increased the

period during which the company was earning insufficient net income to properly maintain its credit.

It is an extremely difficult thing after credit has been once thus destroyed to again convince investors of the wisdom of investing their savings in securities of the street railway industry.

Under Section 21 of the Public Service Commission Act (Amended), which took effect July 1, 1913, it is stated that the Commission may either upon complaint or upon its own motion hold a public hearing and make investigation as to the propriety of such change or changes and "Pending any such investigation and the decision thereon **the commission shall have power . . . to suspend the taking effect of such changes, but not for a longer period than ten months beyond the time when such change or changes would otherwise take effect. . . . The burden of proof to show that such increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the common carrier.**"

Since the passage of the Act up to June 30, 1917, the following street railway companies have filed schedules of increases in fares:

Company	*Petition Filed*	*Action*	*Elapsed Time*
Providence & Fall River . .	Jan. 1, 1914	Granted	71 days
Middlesex & Boston	July 3, 1914	Part granted	117 "
Norfolk & Bristol	Mar. 12, 1915	Part granted	149 "
Blue Hill	Mar. 19, 1915	Part granted	133 "
New Bedford & Onset . . .	Apr. 14, 1915	Part granted	147 "
Berkshire	(Company withdrew petition)		
Bay State	Sept. 7, 1915	Part granted	358 "
Case reopened	May 16, 1917	Part granted	47 "
Mass. Northeastern	Oct. 1, 1915	Part granted	379 "
Bristol & Norfolk	Dec. 20, 1915	Part granted	254 "
Norwood, Canton & Sharon .	Oct. 27, 1916	Granted	186 "
Worcester & Warren	Jan. 17, 1917	Part granted	71 "
Ware & Brookfield	Feb. 21, 1917	Granted	36 "
Concord, Maynard & Hudson,	Apr. 5, 1917	Part granted	50 "
Milford & Uxbridge	May 3, 1917	Granted	97 "
Middlesex & Boston	May 24, 1917	Part temporarily granted	77 "
Holyoke	June 5, 1917	Pending	
Boston & Worcester	June 25, 1917	Pending	
Norton, Taunton & Attleboro,	June 29, 1917	Pending	

The Board in endeavoring to arrive at a decision in rate cases considers, in regard to the investment, the question of whether or not the company is now, **in the light of what has transpired,** to any extent an imprudent investment; whether or not a portion of the capital has been lost through depreciation; whether or not the company has unused property which the Commission feels it ought to sell; what amount ought to be allowed for depreciation; what amount ought to be reasonably allowed for maintenance; the operating results of preceding years; and whether the company is efficiently managed, including in this all the details of management and the determination by the Commission, in the light of the past, as to whether or not the company has made mistakes in any respect.

It can be readily seen that, in order to try to carry out any such line of investigation, not only is a very considerable length of time required, but that some of the points are absolutely impossible to prove.

There is absolutely no reason against, and every reason for, all the parties at interest to have all the time and facilities they wish to analyze a case, but the patient should not be assumed by the doctor to be well, regardless of what he says about his sufferings, while the doctors listen for weeks and months to the evidence of those trying to learn of his ailments and become experts before permitting the doctors to prescribe.

It is the system that is at fault, for the law requires the Commission to proceed exactly as it does. It is a human impossibility for a railroad manager to state exactly what his expenses and earnings are going to be for a year or even less time ahead, but by the present method he must not only prove what the detailed expense of every one of his operations is to be, but he must endeavor to also prove what the earnings will be, and to the extent that he cannot submit such positive proof, to that extent he is not allowed to revise his tariff.

There is nothing in the present system which provides that the opponents of the increase in rates shall prove them to be unfair by showing definitely wherein any particular improved methods will bring better results.

The investors are now obliged to bear not only the

business risk, but to all practical purposes must accept as a finality the action of the Commission. It is clear that either the public or the companies should run the business and bear the risk of so doing. It is illogical, unjust, and unreasonable and has proved disastrous to give to the public all of the rights and to the company all of the risks. This is exactly what the present law accomplishes and this is the principal cause of the existing troubles.

3. Unfortunate Results Thereof

The present method has created a condition where the company, on account of its efforts to efficiently operate its property, is constantly opposing demands of the public in hearings before the Public Service Commission and elsewhere. It seldom is in a position to agree that any changes or improvements in service are wise unless they actually do not decrease net revenue. It is constantly arguing in hearings against the request of petitioners. Such a situation makes both petitioners and the Commission feel that the company is antagonistic to them and is not willing to assist in the combined efforts to improve the transportation conditions. The companies fully realize that their purpose is the furnishing of good, efficient, reliable transportation for the community in which they operate, but in their efforts to fulfil to the highest degree possible their function and give to the car-rider that transportation which is so absolutely essential, they must also keep their property in a successful condition. **The fact is too often lost sight of that the interests of the company and the public are essentially identical and that neither can be served properly at the sacrifice of the other's interests.** A street railway is created for the sole purpose of being the ready means of intercommunication between different parts of a community, and instead of constantly being curtailed and handicapped in its efforts to serve the community it should be given, by the genuine co-operation of those it is trying to serve, every opportunity to efficiently perform its function to the highest degree at all times.

As a matter of actual fact, every burden which is placed on a public utility must, necessarily to a certain degree,

eventually be transferred to the car-rider, either in increased cost of transportation or—if this is impossible, due to inability to raise rates—then in poorer service. The railway man is no more able than the farmer to make two and two equal five. When the farmer is confronted with increased labor and material cost he meets it by an *immediate* increase in his price or the discontinuance of unprofitable production, while the railway man, because of his inability to increase his rate, must necessarily eventually take it out of his service.

A street railway is practically a manufacturing company and is manufacturing and selling transportation. In order for the company to be able to increase the facilities to meet demands for enlarging its factory,—that is, extending its lines or improving its output, and providing increased facilities in the form of more cars, power stations, etc.,—it is necessary for it to secure capital, and to do so it is necessary that it sell its product—that is, transportation—at such a profit as will give a fair return on the investment. The minute it sells its product at less than cost, and is unable to pay a fair return on capital which has been furnished, investors will cease to buy its securities. This is exactly what has happened in Massachusetts. **The investors have already lost so much in income and in the market value of their investments in Massachusetts street railway properties that they are reluctant to invest money under the present system.** A street railway, however, is a manufacturing plant that cannot stand still. The very life and success of the community is dependent upon it, and capital must be secured or the community suffers. As in all other commodities, customers (in this case passengers) must pay sufficient for this necessity to keep the business healthy and successful.

There is absolutely no question but that an unsuccessful street railway is immediately the cause of an unsuccessful community. The life and business of any community are dependent upon the transportation facilities furnished, and without good street railway or steam railroad service the community becomes isolated and its merchants and citizens suffer in both business and social relations.

4. Importance of Credit.

The entire basis of the proper relationship between public utilities and the community served is that of credit. It is a simple and pertinent truth that the individual or concern with reliable earning power can borrow money and secure capital at a much lower rate than the person or company whose credit is questionable or whose earning power is not reasonably well assured.

In a recent address by a United States Senator he stated:

"By a sort of accepted metaphor money has been likened unto the blood in the arteries of trade and commerce. With equal propriety we may characterize credit as the very breath of the life of modern business. . . . Credit is silent, subtle, unsubstantial. It is imperceptible to the senses; and yet credit is a force, a commercial force, so slight that it cares for the smallest transaction on the retail counter, and is a force sufficient to finance embattled nations distraught with blood and war. . . . A credit transaction is the present transfer of a thing of value in consideration of a promised equivalent to be rendered in the future. Futurity is one of its essentials, as confidence or security is another of its essentials. . . . The history of the rate of interest indicates the ratio between the supply of capital and the demand for capital; indicates the prevailing condition as to prosperity or depression; indicates the peculiar hazard incident to a particular business or of a particular individual in a given transaction. . . . Confidence is the soul of credit, and when credit loses its soul evil may follow."

To the extent that the credit of a street railway is impaired or is not well established those who are willing to furnish capital at all demand a rate of return commensurate with what they believe to be their risk, and to the extent that this rate of return is in excess of that which a strong company would have to pay, to that extent the car-rider pays an excess for his service that he would not have to pay if the company had high credit. A very marked instance of that has been recently demonstrated in the refunding of an issue of West End Street Railway Company bonds. (See Appendix E.)

At the rate of return required on a portion of the issue the Company will be paying eventually about $130,000

annually more than it formerly did. Some conception of what $130,000 annually means can be secured when it is realized that this is approximately equivalent to the estimated rental of the suggested tunnel from Andrew Square to Upham's Corner.

While the remedy for such a condition lies, in the case of all street railways in the State, in an increase of fares, it should be clearly borne in mind that the Boston Elevated Railway Company's case is different from all the other street railways, due to the fact that the Elevated cannot raise its fares on account of its charter, while other companies can only raise their fares as the Commission may order.

Men invest their money for one of two reasons: either to secure interest or to secure a profit, and when a company issues securities it is competing in the first instance with safe interest-bearing securities and in the second place with high rate of return securities not so reliable as those bought for interest only.

Money is merely bought and sold as is any other commodity, and in order to secure it one must compete for it. The industry or company which presents the most stable and reliable assurance of the perpetuity of a safe return secures its money at the lowest rate.

The original investors in street railways were pioneers, and it was believed at that time that there were enormous profits to be secured, but this belief has been dissipated. We have now reached a period where it is self-evident to any investor that all he can possibly secure from a street railway industry is a comparatively small return and he therefore seeks some other investment giving either a greater return or more stability.

There is and always will be an element of risk in this industry, due primarily to the very rapid development of the art and the possibilities of changes in form of transportation. The habit, therefore, of flow of investment in this case is gone, and it will be impossible to sharply change the flow of money back into street railway securities unless a very radical change in the method of protecting such capital is assured.

Where a business is always punished for a loss and

receives only a small return for success, money to be invested will seek other and more fertile fields.

There was a time when a certain fascination, as well as a hope for a large return, had a marked bearing on calling to street railway interests, uninvested capital. There was that same fascination which exists in nearly every boy's mind that the only thing on earth he desires to do is to be a railroad man. That fascination, however, with respect to capital as well as individuals is being rapidly dissipated. Further, it must be now realized that much larger amounts of capital are necessary than were required in the initial development of the street railway industry and in order to secure these enormous amounts it is necessary to get them through banks and those places which assemble and buy and sell money. A substantial proportion of investors in this country rely upon bankers for advice on investments. Before the street railway industry can again be placed upon a basis necessary and essential for its development with a proper regard for the community's interests, the confidence of the bankers must not only be secured as to the present situation, but they must be reasonably well assured that any improved situation will be reasonably permanent.

5. Middlesex and Boston Rate Case

The situation is particularly well described in the Middlesex and Boston Rate Case Decision, in which the Massachusetts Public Service Commission stated in 1914:

"It should never be forgotten that our public utility companies are not finished. They are in process, they are constantly calling for new capital and of recent years in increasing amounts. They must be kept on good trading terms with the investing public or the whole experiment of private ownership and public regulation of these public utility companies will fail. It is as necessary to attract capital into the public service as it is to prevent the mismanagement of these companies or extortion by them. **If regulation is to limit (as it should) the profits of stockholders to a moderate return, not greatly in excess of an investment rate, regulation must also protect, so far as it reasonably may, all investments honestly and prudently**

made and properly managed in the public service; otherwise there will be no such investments. It is entirely clear that in the long run the rate-paying public as well as the investing public will be best served if regulation makes its fundamentally guiding principle an attempt to protect investments honestly and prudently made and wisely managed.

. . . . . .

"As a broad proposition it is in the public interest that railway companies should earn and pay such dividends as to keep the market value of their stock at par or a little above par. In this way only can new capital be obtained by marketing stock, for our law does not permit stock to be sold at less than par. Even if capital were obtainable by increased borrowing, it is an unsound policy to allow carriers to become overburdened by fixed charges for borrowed money. The deplorable financial condition of many of the railroads in this country, due to excessive borrowing (much of it on short-time notes and at high rates) warns us to adhere to the old-fashioned method of obtaining capital in large part through stock issues.

No absolute rule can be laid down as to what dividends are necessary to keep the stock of any carrier at par. At times and with companies high in public favor a 4% dividend has been adequate; at other times and with other companies nothing less than 6% or even more has been adequate. Manifestly, under present financial conditions, nothing less than a dividend of 5% or even 6% would bring a carrier's stock, otherwise reasonably sound, up to a par value. Of course this ideal of putting and keeping stock at par or a little better can be reached only under conditions approximating those we have described above—of investments reasonably sound and management reasonably wise, disinterested, economical and prudent."

6. Supervision versus Administration

The American people as a whole are fair, and when the facts are plainly put before them they usually agree that a man must be permitted to have a voice in the disposition of his savings.

With our privately owned public utilities we of course must have a supervising body in order to be assured that the railway serving the community shall not abuse its opportunities, and must render with a proper return on the investment a fair and proper service; but the basic

principle of our government that a man shall not have his person or property taken without due process of law, should necessarily assure him, so long as he abides by established law, a voice in the use of his money and an opportunity, without undue interference, to try to secure a fair return on his savings which he puts into any business.

This means, therefore, that a commission should have supervisory powers, but the powers of administration must be left with the investor and his representatives.

Companies now have neither the right to finally decide what service they shall render nor what they shall charge for it, but are required to assume responsibility for expenditures made in order to provide such service as the Commission may order. Such divided responsibility makes for lack of confidence by the investor and inevitably poor service for the car-rider.

A street railway corporation is required by the revised laws to be managed and conducted by a board of directors, and if the board of directors of a company may not in the absence of apparent imprudence manage its property, when in any event its action is subject to review, then the power of the Commission should be exerted in advance with full responsibility to the investor; it is unfair to require the directors to act at the peril of their judgment, honestly exercised, being reversed and nullified in the end.

Supervisory powers by a commission are supposed to be always existing but not constantly in action, while powers of administration must be continually exercised. In other words, some occasion may arise to require the exercise of supervision, while administration must be exercised constantly. If a property is properly operated within the law, commission supervision is unnecessary.

In the case of the Great Western Railroad, Mr. Justice Brewer said:*

"It must be remembered that railroads are private property of their owners, that while from the public character of the work in which they are engaged the public has the power to prescribe rules for securing a faithful and efficient service

*This and subsequent quotations were taken from the "Brief of Hon. Frederick W. Lehmann, in St. Louis Rate Case." They appear in an extract published by the Legal Department of the American Telephone and Telegraph Company. (See Appendix F.)

of equality between shippers and community yet in **no proper sense is the public a general manager."** (See Appendix F.)

The Supreme Court of Vermont has held:

"It is not for the public good that public utilities be unreasonably restrained of liberty of action or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service."

In a decision handed down July 3, 1917, by Chief Justice Rugg of the Massachusetts Supreme Court on the case of *Hayden et al.* v. *Perfection Cooler Company et al.*, the Court stated:

"The control of a corporation is vested in directors or other officers who occupy a trust relation to the corporation and who are presumed to be zealous for the promotion of its welfare."

Under the present method of procedure, the Public Service Commission is prosecutor, judge, and jury, combining in itself judicial and executive powers. As evidence of the difficulties of the present method of regulation Hon. Charles A. Prouty in an address delivered in 1907 said in part:

"If the Interstate Commerce Commission is vested with a jurisdiction so tremendous in extent and to such finality, every effort should be made to provide a body adequate to the trust. . . . **I very much doubt whether the same body can properly discharge both these functions (executive and judicial). In the end it will either be remiss in its executive duties or will, in the zeal of these, become unfit for the dispassionate performance of its judicial functions. Whatever may have been true in the past, the time has come when the Commission should be relieved of all its duties except the hearing and deciding of complaints."**

I, like many others, do not believe that commissions are hostile to the railway interests, and do believe they are earnestly endeavoring to mete out justice to all concerned, but that the system under which they must perform their duties makes it absolutely prohibitive for them to render to all interests the equitable adjudication necessary to the welfare of the industry and the community.

Up to a few years ago the establishing of rates was in the hands of the board of directors of a company. The managers of the property appointed by those who had invested their money had the power of regulating the price at which they should sell their commodity, subject to a demonstrated unfairness by the former railroad commission. In each case it was necessary for a remonstrant to show that such rates were unfair, inexpedient, discriminating, etc., in order to have them reduced. Under that method of procedure the electric railway industry was developed. Upon the creation of the Public Service Commission, however, the rate-making power was conferred entirely upon it, and the management of a street railway was confronted with the problem, when it became necessary to make any modification of its rates, of proving beyond question the soundness of each detail of its business.

7. Is the Commission Regulation of Street Railways a Success?

There can be no question but what there have been many advantages in commission regulation, and the system has undoubtedly accomplished a great deal, but unfortunately it has cared for but part of the situation which it was created to cover. It has prevented the issue of other then genuine securities, has prevented abuses, careless operation, and discrimination, has compelled a correct and honest keeping of accounts, has forced public utilities under its jurisdiction into making public such information as has been beneficial; but it has failed to perform one of its most important functions in its failure to provide for a reliable method of adequately increasing the transportation facilities of the Commonwealth. In speaking of regulation of public utilities, E. K. Hall, formerly vice-president of the New England Telephone & Telegraph Company and now vice-president of the Electric Bond & Share Company, states:

"If we ask ourselves if the regulation of public utilities is a success, I think we must all admit, and I think even the commissions would admit with us, that the answer is, 'Not Yet.' The regulation of public utilities has already

accomplished a great deal. It has accomplished a good many things that it started out to accomplish. It has cut out rebates; it has cut out discrimination; it has cut out excessive and unreasonably high rates, though there were never a great many, in my judgment. It has prevented, almost throughout the United States, now, the duplication of public utilities and the waste that comes from it. It has given the public an opportunity to appeal to an authoritative tribunal, whenever they felt that they were not getting a square deal, and it has made the companies realize, and the officers responsible for the management of the companies realize, better than they did before, what their real obligation is to the public.

. . . . . .

"So far, I think we can say that the regulation of public utilities has been a success, but there is one respect in which regulation has not yet shown that it is able to handle the proposition, and that is in the question of adjusting revenues to the needs of the service. **Regulation so far has found it very easy to make rates reasonable when their unreasonableness consisted in their being too high, but where those rates were unreasonably low and did not provide enough money to give the public the service that its necessities require, regulation seems to have run up against a problem that it is apparently unable to handle."**

We are too prone to say: "Well, anyhow this system will probably last through my time. It has gone on a long time and it is likely to go on still further." The difficulty of a man who feels this way is that he has failed entirely to realize that the cessation of development of transportation is the forerunner of the death of the community affected.

8. Importance of Service to the Car-rider

There is a tendency on the part of all concerned to not fully realize the tremendous importance of excellent transportation service. The President of the United States has stated:

"To the men who run the railways of the country, whether they be managers or operative employees, let me say that the railways are the arteries of the Nation's life and that

upon them rests the immense responsibilities of seeing to it that these arteries suffer no obstructions of any kind, no inefficiency or slackened power." (Proclamation of President Wilson, April 15, 1917.)

As an evidence of the attitude of the American people toward this subject, in the early development of the West it should be remembered that the United States Government actually subsidized some of the trans-continental roads; that in this State the Hoosac Tunnel was financed by the State, and, regardless of what may or may not have occurred in regard to the finances in this particular matter, there surely can be no question in anybody's mind but what the use of that tunnel in making New England a part of the rest of the country has been of tremendous value.

If it is desired to ascertain what service means or how essential the local transportation industry is to the community, let us imagine for a moment that the Washington Street Tunnel, the Cambridge Subway, and the Boylston Street Subway were filled up with sawdust and remained so filled for a period of thirty days. Can you imagine what would take place with respect to the communities now served to the north and south of Boston by the Tunnel, and to Cambridge, Belmont, Waverley, Watertown, Arlington, Newton, Brookline, etc., by the Cambridge Subway and Boylston Street Subway? In our normal habit of riding to and from the residential and business district through these underground thoroughfares it becomes so natural for us to rely upon them that an appreciation of what their loss would mean is seldom considered.

One can readily imagine the tremendous value for instance to the territory served by the Boston and Worcester Street Railway. There can be little question but what the territory served by an interurban line of that character receives tremendous benefit as a result of good street railway service. Further, it is difficult to conceive how serious would be the conditions in localities like Arlington, Watertown, Mattapan, Neponset, etc., if the street railway service to and from those districts to the heart of the city were discontinued.

Still further evidence of how serious is the obstruction

of good service is found when, due to conditions entirely beyond the control of the Company, a drawbridge or broken-down team completely paralyzes the service on any one line for but a few minutes.

I merely mention this in order to make clear, if possible, that the question of rates of fare is of secondary consideration as long as they are anywhere near within reason, as compared with the importance of good service.

There is no question but what the reduction of a few moments in the time of a passenger's arrival at his destination is a matter for which he is willing to pay a reasonable amount. For instance, it is scarcely conceivable but what almost any car-rider would be willing to pay one, two or three cents more per day for good, reliable transportation, than he would for poor transportation. I have always maintained that a passenger is willing to pay for good transportation if he gets it. While a small increase in rates means comparatively little to the individual, it does mean in the aggregate a substantial sum which not only permits of better transportation but so assures the investor of a reasonable return that he is not only willing to furnish funds for improved facilities and extensions but is willing to furnish these funds at a comparatively low rate of return.

9. Scope of Problem

There has been a tendency toward lack of confidence between the public, the Public Service Commission, and the railway officials, and that lack of confidence has created a suspicion which makes for other than satisfactory results. Many of us have failed to realize that the conditions of many years ago, when railroads and railways could do very much as they pleased, has entirely passed; that to-day more information is probably available to the public in regard to the railways and railroads than in regard to any other industry in the country.

We are too prone to be unfairly influenced by too close a perspective of any situation we may be studying. A perusal of the duties of the Public Service Commission, and then the Act which prescribes the duties of your Honor-

able Commission, will show that nearly all of the detailed questions before you are ones on which the Public Service Commission are required by law, and, to the extent they deem necessary, do make recommendations to the Legislature in their annual reports. You have, however, I believe a very much larger question to solve—a question of principle. I doubt if you can, with the time at your disposal, study every phase of each detail of the problems named in the Act under which you are sitting. That which prompted this Act, that which created the condition in which we find our electric railways in this Commonwealth, is in part, I believe, a result of the action of a wrong economic principle; *i.e.*, that utilities created by private capital can be successfully extended and administered by public authorities without an assured responsibility to those who furnish the capital. It is a problem involving the basic principle of conservation of wealth. **The Commonwealth of Massachusetts and every community in the Commonwealth is suffering to-day for lack of absolutely necessary transportation facilities, either steam or electric, or both. Due to what? We have tried to continue the development of the most important industry in the world—transportation—by an unsound principle!**

As evidence that it is a national question, let me quote from Mr. Harlan's dissenting opinion in the recent steam railroad case before the Interstate Commerce Commission:

"The record in my judgment demonstrates a proposition that has long been clear to me, namely, that a rate is a public question and that the existing rates, aside from any interest that the owners of our railroads may have in the matter, could well be advanced in the public interest, in order that assurance may thus be given for the early enlargement of our transportation facilities." (See Appendix G.)

There is no finer railroad system in the world than the Pennsylvania Railroad and probably no more competent and able executive than President Samuel Rea, who states:

"I would like to ask if there is any more important interest in the great State of Pennsylvania than its railroads, and if you think any other interest could live under the present

intolerable and agglomerated regulation and price fixing to which it must submit? All suggestions of taking over coal mines, shipyards, etc., by the Government, or the output of same, on any percentage contract, seem to agree in allowing the owners at least 6 per cent on the cash invested in the property, the cost of depreciation, depletion in case of mines, etc., and a profit. And yet the Commission seems to regard as sufficient its estimate, for the year ending June 30, 1917, of a return of 4.89 per cent on road and equipment provided for public use by the Eastern railroads, out of which they must pay their interest on borrowed money, dividends on money invested by holders of stock, provide a margin for lean years and buttress their credit."

The real question is what is to be done to have live, real, virile, efficient, reliable, healthy arteries of transportation to closely knit this Commonwealth with other States and to facilitate ready, easy, prompt, and ample means of movement of passengers and freight between different communities within the Commonwealth.

III. SUGGESTED REMEDY

1. Principles of Remedy

I believe, therefore, that to find a real constructive solution and to insure a continuance of street railway development which is absolutely essential to the growth of the Commonwealth it will be necessary to get down to fundamentals and completely reverse the present system of commission regulation in so far as fares are concerned. The relations between that portion of the public who are car-riders and that portion of the public who are investors must be equitably regulated the same as all other political and economic relations are governed. **The Public Service Commission should be a commission of supervision and not have the powers of administration, for you cannot have successful administration of private capital by public authorities without direct responsibility to the person who furnished the capital that makes the business possible.**

Your investor, regardless of what he invests in, must

be permitted to run his business according to his best judgment, and sell his goods at such prices as will render a reasonable return on the investment, provided he conducts himself at all times in accordance with the law of the community. He must be so allowed at least until he is shown to be in error by a proper authority, and then the same authority should prescribe the changes he must make in his practices or administration and assure the conserving of his interests. It is of course easy to criticise, but to offer genuine constructive criticism is quite another thing. No efficient manager of to-day is averse to receiving constructive suggestions.

I suggest, therefore, that justice to the car-rider, fairness to the investor, and ample provision for extensions and improvements may be provided by the following method of procedure:

The directors of a street railway company after making a proper investigation and estimate of their business for the ensuing year and finding or foreseeing net returns insufficient to yield such fair return as is necessary to obtain additional capital should be authorized to establish and file with the Public Service Commission such revised tariff as in their judgment is necessary, which should go into effect at the expiration of thirty days. If the Public Service Commission at any time thereafter finds, after such investigation, hearings, etc., as it deems necessary, that the new tariffs are in its opinion in excess of those necessary to produce a return of 6 per cent or such greater return as may be necessary to invite additional capital, it should so rule, and at the same time point out in what respects, if any, the administration is not prudent or efficient to a degree sufficient to substantially effect the net return and to warrant a modification of the tariff.

The Commission should also state what tariff they believed proper as the result of such suggested economies.

If a company against which such finding had been made deemed such reduction unfair, it should have the right to appeal to the courts upon those points criticised by the Commission with a view to having a court decision

as to whether or not the directors of the company had exercised reasonably good managerial judgment in the performance of their duties.

Any tariffs thus once established on which no order of the Commission had been rendered should continue for a period of not less than one year from the date of establishment, and any tariffs fixed by the Commission which the company had accepted, or which the company had not accepted but which had been upheld by the court, should continue for a period of at least one year from the time of such Commission's accepted finding, or in case of court decision one year from date of such decision. In case of appeal to the courts the fare established should continue until the decision.

By this means when the administration of the property had not been reasonably efficient any tariffs which it might have established could be changed provided the company accepted the decision of the Commission, or in its failure so to do the tariffs could be changed at the time of the court decision provided the court rendered a decision supporting the Commission in its findings.

Of course there are cases in the Commonwealth where lines or companies exist which never have, do not now, and probably for many years will not earn a fair return, or in some cases not even operating expenses; and in some of the cases it is likely that an increase in fare sufficient to yield theoretically a reasonable net return based on the present number of passengers would in fact so reduce the number of passengers as to bring the earnings below their present amount. Under such circumstances the community affected should either permit the company to take up the lines and sell the material if the stockholders so desired or should subsidize the company or take over, own, and operate it.

Further, in order to prevent excessive dividends, the company should be required after any increase in fare to make proper provision for depreciation, obsolescence, etc., and should be prohibited from paying a rate in excess of 6 per cent, unless a higher rate was necessary to invite additional capital.

ANY SURPLUS WHICH MIGHT BE LEFT OVER ABOVE A FAIR RETURN SHOULD BE PUT INTO A SPECIAL FUND TO BE USED IN LIEU OF CAPITAL FOR SUCH PURPOSES AS THE COMMISSION MIGHT APPROVE. By so doing you would have a constant control by proper public authorities over a company, that would prevent it from arbitrarily raising fares to pay unfair dividends. **The payment of excessive dividends could and should be absolutely prevented by this means.** A street railway in an established community should be so safeguarded in all respects that the payments of more than reasonable dividends would be unnecessary to ensure its stability.

Another element of importance in the suggested system would require that all bills affecting street railways introduced in the Legislature should be referred to the Public Service Commission for prompt report in order that they might make clear to the Legislature or legislative committees just what effect each bill would have upon the industry and the public.

2. Trusteeship of Directors

The board of directors of a street railway company are the trustees of funds invested by their fellow-citizens, and they should not be permitted to abuse their stewardship of such individuals' savings by neglect of their duties or by lack of ordinary prudence, discretion, and intelligence.

The trusteeship exercised by a board of directors of a public utility should be discharged both in an honest and efficient manner, and in the last analysis, in case their judgment is believed to be imprudent, negligent, or shows lack of ordinary discretion and intelligence in the opinion of the Commission, the question should be settled by the courts.

It is often said that rights in the highway are held by public service corporations in trust for the public. If that is so, the public should not be in a position to require the corporation to pay out of its own pocket, so to speak, any loss unless in the administration of this trust it has failed to exercise the reasonable care and prudence which a

trustee is required to exercise in a private trust. In other words, a beneficiary under a trusteeship may appeal to the court for the interpretation of reasonable care and prudence, and why should not the parties at interest in a street railway case have the same right?

Carrying it one step farther, the investor in street railway securities should be placed in such a position that he will be certain that his investment and a proper return upon it will be protected against any reduction by the public supervisory powers, if his representatives, the directors, have administered the property with the same care that trustees are required to administer other property.

In the Cyclopedia of Law and Procedure, Vol. 30, page 390, the duties of a trustee are explained as follows:

"The true rule which should govern his conduct is that he is bound to employ such prudence and such diligence in the care and management of the estate or property as men of ordinary prudence, discretion and intelligence employ in their own like affairs. . . . But he is not an insurer; neither is he required to be infallible in his judgment, or to possess the power of anticipating events not generally looked for."

Further, in Dickinson Appellant, 152 Mass. 186, it is stated:

"The rule in general terms is, that a trustee must, in the investment of the trust fund, act with good faith and sound discretion, and must, as laid down in *Harvard College* v. *Amory* in page 461, 'observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of the capital to be invested.'"

There should be no difference between the conserving and safeguarding interests of individuals by adjudicating questions in courts where such individual is an investor or owner in a public utility, than where such investor owns other personal property.

Only by assuring such protection to the investor will it be possible to secure new capital at a low rate which is needed to assure to the car-riders that regularity and efficiency

of street car service to which they are not only entitled but upon which they are absolutely dependant for the social and commercial success of their community.

3. Efficient Management

The Commission should continue, as at present, to keep itself informed as to the condition and service of the companies by the methods they now employ, so that when a new tariff is filed they will know reasonably well the real condition and practices of the company. As to the question of efficient management, judgment in all matters differs frequently and substantially. Different men thinking separately seldom come to the same conclusion concerning the details of complicated matters, but except on minor matters the joint decision of a board of directors is the result of expert advice and due deliberation of a number of trained minds. The efficient manager to-day instead of trying to promulgate his own opinions and ideas takes counsel of his associates and subordinates, and it may be safely assumed that he has a reasonable pride in his work and endeavors to render a decision that is sound and capable of being substantiated.

To err is of course human—we all make mistakes; but I do not believe that railway men as a class are more subject to wrong judgment based on the facts available at the moment of decision than men in other industries, and in few lines of business are the details of a man's decision held up to more intensive spotlight and human gaze than in the street railway profession. Of course "hind sight is better than foresight," so in reaching a decision as to efficiency the facts available at the moment of decision must be the basis of judgment.

Whatever system is designed to meet the situation must not only **not** put a premium on the drone, but must so establish the railway industry as to encourage the best talent to go into it, and when once so engaged must make men proud of their profession regardless of the branch or relative importance of their position. This is not the situation to-day.

That which the board of directors of a company have con-

scientiously done, in compliance with the law and in the light of their experience and knowledge, basing their action on the information available at the time of decision, must be assumed to have been properly done, and any results of operation or any expense incident thereto must be considered a legitimate and proper expense of the business.

4. Basis of Service Regulation

It is not suggested to modify any of the powers of the Public Service Commission except to provide for proper supervisional powers rather than what are practically administrative powers.

The Act which established the Public Service Commission, Section 23, Acts of 1913, Chapter 784, provides in regard to orders as follows:

"Before making such order, the commission shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of such hearing, **the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the commission of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public.**"

This provision of the present law is intended to give the investor some protection, but it has proved inadequate. The Commission should not only consider the financial ability of the Company to comply with the requirement of the order, but it should also make a definite finding as to the financial consequences of such compliance and should allow such readjustment in rates or service as may be necessary to cover the increased cost of complying with the order. **Under this provision the Public Service Commission could require any amount or kind of service if it simultaneously made provision for covering its cost, but it should not be permitted to require service and deny the Company the means of meeting added expense.**

IV. CONCLUSION

1. Importance of Permanency of Solution

I doubt if any temporary relief which you might suggest would meet the situation, for the permanency as well as the sufficiency of any relief are the only things that will bring back into the railway field the much scarred and impoverished investor who has seen both his income and the value of his investment disappear.

What is done to remedy the situation must have a **decidedly strong element of permanency,** not only to invite new private capital now, but to make it reasonably clear in the invitation that a repetition of the present situation will not occur again in the near future.

After the war is over there will be a world-wide and keenly competitive market for capital, and it is manifestly for the best interests of the Commonwealth to provide for the development of its own transportation industry—the very back-bone of its prosperity—by making the investments of its citizens' savings in its railways and railroads so secure that their entire savings will not be forced into other investments or foreign markets.

2. Massachusetts the Pioneer

Massachusetts in years gone by was the sturdy, reliable, and responsible source from which flowed the wealth and ability that achieved so much for the advance of the State and the Nation. The prestige of the abilities of her men was recognized throughout the country, and her wealth contributed very substantially to the building of the great Western railroads and the financing of the advancement of the growing Western cities and industries—and yet during all those days the **home** investment was safe and secure, and the investor, the law, the public sentiment took good care that they so remained. **She was**

the pioneer in establishing a system of supervision and regulation of public service corporations, and she acted according to her best judgment in so doing. Her system, however, transferred the most vital function of the management of her street railways to public officials who have been prompt and zealous in checking advance in rates but who have been slow and reluctant in allowing advances required in the interests of adequate transportation service. She has tried the experiment and it has failed in one of its functions, in the case of street railways. Will the State for want of a courageous and statesmanlike act fail to recognize the injustice which it is doing her own home industries, her street railways, and indirectly the communities served? **I believe Massachusetts has sufficient honesty to admit the failure of this one function of its system of supervision and has the courage to apply the remedy,—the only remedy,—which is, to give the trustees of its public transportation companies the power to establish increases in fares, subject to revocation after a limited period and with proper appeal, whenever that is deemed to be for the public interest; and by the public interest I mean the real legitimate interest of the travelling public which compels a recognition of the interest of the investor.**

3. Other Solutions

While I feel very strongly indeed that in order to insure the development of the street railway industry in this Commonwealth some means different from that now existing must be provided in order to create a proper confidence by investors, by making possible their management of a business in which their funds are invested, I have absolutely no pride of authorship in the machinery suggested for accomplishing this purpose. There can be little doubt but what a very radical change must be made, but it is entirely likely that others may devise some scheme equally as good or better than that which I suggest for accomplishing the desired result.

4. Recommendations

Has not, therefore, your Honorable Commission an opportunity to be the pioneer in the recognition and establishment of a principle applicable to all transportation lines throughout the nation that would compel railway and railroad directors to manage their properties efficiently and give good transportation, and would enable and require public authorities to supervise such companies for the equitable interest of all concerned, instead of permanently giving a commission what would appear to be the impossible task of administering the detail of millions of dollars' worth of private capital without direct responsibility to the investor?

Is not your task, therefore, not to try to revise all the laws affecting street railways, but to recommend an act dealing with the basic fundamental principles of the present system and to endeavor to establish a permanent reciprocal relationship between the citizen who rides and the citizen who makes possible the vehicles in which to ride, that is, the producer and the consumer, the manufacturer and the customer, so that the latter may pay for what he gets and get what he pays for and the former may receive on his money properly invested in a public utility under public authority a reasonably fair return, no more and no less?

I respectfully submit, therefore, for your consideration the following suggestions:

First.—It should be constantly realized that substantially all capital stock of street railways has been issued and the funds invested in the property in this Commonwealth, under the authority and inspection of the Railroad Commission or Public Service Commission, and therefore the usual charge of watered stock is not applicable to Massachusetts street railways. Therefore substantially the amount paid at the time of issue for stocks and bonds is the proper one on which to consider a fair return.

Second.—The importance of the industry to the com-

munity makes it imperative that some permanent means be provided either by private or public funds for its constant development, both with respect to extension of lines and enlargement of facilities on existing lines.

Third.—There need be little change in the laws with respect to the inspection and supervision of the companies by the Public Service Commission so far as service, safety, etc., are concerned. The change that seems necessary to effect an improved condition in the street railway industry in the State concerns that portion of the present Public Service Commission Act which deals with the fare-regulatory powers of the Public Service Commission.

Fourth.—Every burden or obligation such as paving, taxes, contribution to abolition of grade crossings, etc., becomes a part eventually of the operating expenses of a street railway, and every element which tends to reduce the gross receipts such as unrestricted operation of jitneys, etc., also eventually becomes the car-riders' burden. Therefore to the extent that your Honorable Commission deem it expedient to recommend modifications in the present acts with a view toward increasing the net returns of companies, to that extent, if the legislature approves, will fares be lower.

Fifth.—Various boards of public authorities such as boards of aldermen, superintendents of streets, boards of selectmen, highway, park, bridge, and other commissions, etc., have jurisdiction over some detail or other of street railways. It would be advantageous to all concerned to have the Public Service Commission authorized to act in the capacity of a board of appeal or supervisory board with very full powers on all matters where at present final jurisdiction rests with these other authorities.

Sixth.—The present unsatisfactory financial condition and service of substantially all street railways in the State is evidence of the necessity of some prompt and constructive action whereby good service can be assured.

Seventh.—In order to restore the necessary confidence of investors in the continuity and integrity of a fair return, the companies should have limited powers to initiate

their tariffs, subject to the corrective restriction of the Public Service Commission, with an opportunity to appeal to the courts for adjudication of differences in opinion.

Eighth.—Any solution of this problem must recognize the importance to the car-rider of continuity of return on investment, and that merely temporarily improving the situation by increases in rates of fare will not be sufficient to again induce private investors to supply funds for extensions and improvements.

Ninth.—In every case where the credit of a street railway company is so impaired as to compel the payment of a rate of interest higher than the rate would be if the credit of the company was good, for either refunding existing securities or for providing funds for extensions, betterments, etc., the car-rider eventually suffers by paying more for the actual service than would otherwise be necessary.

Tenth.—The only way first-class street railway service can be assured to the car-rider, regardless of whether capital through private ownership or public ownership is employed, is for the rate of fare to be sufficient to pay a proper rate of interest, except that if public funds are employed any deficit in operating expenses or net income below the amount necessary to pay interest on bonds issued for such public purposes must be made up from taxes on the community served.

Therefore I suggest to your Honorable Commission the expediency of recommending to the next Legislature the enactment of legislation to accomplish the result of permitting street railway companies to fix what they believe to be fair, proper, and necessary tariffs, subject to corrective supervision by the Public Service Commission, and to provide a clear method and a method as simple as possible for adjudication by the courts of questions of equity.

APPENDIX A

Notice was issued by a sub-committee on ways and means of the New York State Railway Association to obtain additional revenue in New York State, this committee consisting of the presidents of the Brooklyn Rapid Transit, New York Railways, Third Avenue Railway, New York & Queens County Traction Company; the vice-presidents of the J. G. White & Co., the United Traction Company of Albany, and the Westchester Street Railway Company; and the receivers of the Second Avenue Railway of New York and the Empire United Railways Company of Syracuse. This committee states in part:

"In opening before the Public Service Commission the cases of 28 upstate electric railway companies applying for an increase of fares from 5 to 6 cents, Professor Thomas Conway, Jr., of the Wharton School of Finance, submitted a statement based on reports to the Public Service Commission that more than one-half of the petitioning companies were not only paying no dividends, but they were not even earning the interest on their bonds, and faced receivership if they obtained no relief.

"Professor Conway also stated that from the reports to the Public Service Commission the net corporate income of 27 of the 28 petitioning companies despite an increase of total business had fallen from $1,143,294 in 1912 to $423,711 in 1916.

"In the same period the interest on bonds in default had increased from $11,875 in 1912 to $374,007 in 1916.

"He also testified that 13 of the 28 petitioning companies failed to earn their fixed charges in 1916.

"Professor Conway testified that only three of the companies had income enough to enable them to market their securities. He stated that even a 6 cent fare would not make up for the loss of purchasing power of the nickel in the buying of supplies for street car service, and unless relief were granted sufficient to make the industry attractive to investors the companies could not keep up service, buy cars or other equipment, extend lines, and some must go into receivership.

"Edmund P. Waller, Manager of the Railway Department of the General Electric Company, and Roscoe Seybold, of the Westinghouse Electric and Manufacturing Company, testified that all kinds of electric apparatus used by street car companies, on account of increased costs of labor and materials, cost from 50 to 125 per cent more than in 1914.

"Labor costs in the production of these supplies had advanced from 30 to 40 per cent since 1914; steel plates had increased as much as 700 per cent, copper 120 per cent, steel castings 100 per cent, steel forgings 340 per cent, coal 80 per cent, brass 200 per cent, etc.

"W. G. Kaylor, of the Westinghouse Traction & Brake Co., testified that since April, 1917, air brake equipment had increased 27 per cent in price, and James S. Thompson, Vice President of the American Brake Shoe & Foundry Company, testified to a 63 per cent increase in cost of brake shoes.

"Wm. H. England, of the Electric Service Supply Company of Philadelphia, testified that trolley wire, insulators, etc., had increased 200 per cent in the last three years, due to increased costs of labor and material, especially copper."

Further, to quote from a news item in a New York paper:

"Joseph K. Choate, chairman of committee on Ways and Means of obtaining additional revenue, acting for electric railways of New York, says: 'These are the most important electric railway rate cases ever heard in the United States, and the result will affect the whole future of the electric railway business.'

"'This increased fare movement, owing to increase in cost of materials, is country-wide, and 68 applications for increased fares have already been granted.'"

APPENDIX B

To show still further that this is not a purely local condition of affairs let me quote part of a statement of the general manager of an Eastern Pennsylvania railway system, who announced recently that his company had filed with the Public Service Commission of Pennsylvania a new schedule of street car fares to become effective August 30. The new standard fare will be 6 cents as a general rule.

"Our Company held off as long as it could, hoping that conditions would adjust themselves so that it would not be necessary to increase street car fares. We find, however, that it is taking more than twice as many nickels to pay our coal bills, for instance, as it did three years ago.

"Our situation is not unusual. It is the same with street railways all over the United States. Already sixty-eight companies including our nearest neighbors, the Schuylkill Ry. Co. which has increased its fare to seven cents and the Hazelton Traction Co. which has put in a six cent fare—have increased fares above five cents and many others are preparing to do so.

"We regret that it is impossible to keep the fare at five cents, but we are in the same position as practically every other business. We simply cannot supply transportation unless the public pays the cost of it.

"For a number of years street car lines have been faced with rising costs of labor and materials, with no increase in fares. At the same time, the public has demanded constantly improved service. For a while we were able to make ends meet by instituting every economy known to the art, but now expenses have reached a point where the only way out, left, is for us to increase the cost of the service to those who use it.

"We have given much thought to the method to adopt to increase our revenue, and after considering all the features of street car service in this territory, we have decided that the fairest way is to make a flat increase from five to six cents without disturbing the present zone system. This system has been developed to suit the habits and conveniences of the people we serve."

APPENDIX C

BOSTON ELEVATED RAILWAY COMPANY

BUREAU OF PURCHASE

AUGUST 10, 1917

COMPARATIVE COSTS OF MATERIALS 1914 AND AUGUST 1917

	1914	*1917*	*Increase %*
Rails, Girder	$38.80 G.T.	$52.80 G.T.	36
Rails, T	33.94 G.T.	44.36 G.T.	30
Rail Joints	38.80 G.T.	72.80 G.T.	87
Crossover, Track	979.00 each	1,772.00 each	81
Switches, Track	149.40 each	394.00 each	164
Mates, Track	112.40 each	299.00 each	166
Frogs, Track	112.00 each	251.00 each	124
Spikes, Track	.0157 lb.	.0514 lb.	227
Tie Rods	.0179 lb.	.0485 lb.	171
Tie Plates, C.I.	.0103 lb.	.0289 lb.	180
Tie Plates, Steel	.0145 lb.	.0495 lb.	241
Bolts, Track	.0240 lb.	.0690 lb.	187
Bolts, Track, O.K.	.08 each	.18 each	125
Bolts, Machine	85%–2½% disc.	50%	241
Rivets	$0.0165 lb.	$0.0507 lb.	207
Axles	.0240 lb.	.0678 lb.	182
Wheels, C.I. (Exchange Basis)	.66 cwt.	1.325 cwt.	100—Market price to-day $1.75 cwt., incr. 165%
Wheels, Steel 33"	15.50 cwt.	27.25 cwt.	75
Castings, Gray Iron	.0240 lb.	.0370 lb.	54
Castings, Gray Iron	.0240 lb.	.05 lb.	108
Castings, Malleable	.0345 lb.	.0769 lb.	123
Castings, Steel	.0615 lb.	.238 lb.	287
Steel Bars (Mill Shipment)	.0123 lb.	.0319 lb.	159

	1914	1917	Increase %	
Steel Bars (Boston Stock)	.0165 lb.	.0510 lb.	209	
Steel Plates (Boston Stock)	.0160 lb.	.08 lb.	400	
Steel, Tool, High Speed	.50 lb.	2.50 lb.	400	
Steel, Tool, Carbon	.055 lb.	.10 lb.	82	
Brake Shoes	38.61 M. miles	76.26 M. miles	97	
Journal Boxes	3.50 each	11.25 each	221	
Springs, Car	.0205 lb.	.0580 lb.	183	
Gears	11.00 each	20.52 each	87	
Pinions	3.65 each	6.66 each	82	
Gear Cases	10.00 each	19.85 each	98	
Nails, Cut	.0180 lb.	.0391 lb.	117	
Boiler Tubes	.097 ft.	.38 ft.	291	
Tubular Poles	.0243 lb.	.0469 lb.	93	
Trolley Tubing, Brass	.15 lb.	.40 lb.	166	
Trolley Wheels	.45 each	.90 each	100	
Copper Trolley Wire	.165 lb.	.39 lb.	136	
Copper Cable 2,000,000 C.M.	1,322.49 M. ft.	3,228.00 M. ft.	144	
Copper Bonds	40%–2½%–5% disc.	10%	62	
Signal Cranks	$0.62 each	$1.10 each	77	
Ash 4″	72.00 M.	115.00 M.	60	
Hard Pine, Prime	30.00 M.	62.00 M.	106	
Spruce	23.00 M.	33.50 M.	46	
Sand	.50 cu. yd.	.60 cu. yd.	20	—Market price to-day $1.00 cu. yd. incr. 100%
Stone, Crushed	.97 ton	1.55 ton	60	
Cement, Portland	1.62 bbl.	1.82 bbl.	12	—Market price to-day $2.37 bbl., incr. 46%
Rope, Manila	.11 lb.	.305 lb.	177	
Rope, Wire	70% disc.	15%–12½%–5%	135	
Tape, Cotton 1″	$0.80 gross	$1.75 gross	118	
Tape, Asbestos	.34 lb.	1.30 lb.	282	
Waste, White	.07½ lb.	.11⅜	52	
Waste, Wool	.12 lb.	.21¾	81	
Tape, Linen ¾″	.35 gross	.95 gross	171	
Webbing, Cotton 1″	.85	1.85 gross	117	
Hose, Linen Fire 2½″	.15¾ ft.	.315 ft.	100	
Drills, Twist, Carbon Steel	75%–10%–5% disc.	60%	87	
Drills, Twist High Speed Steel	$2.55 each	$9.64	278	
White Lead	.059 lb.	.12⅜	110	
Linseed Oil	.55 gal.	1.14 gal.	107	
Shellac	.17 lb.	.57 lb.	235	
Glue	.10 lb.	.30 lb.	200	
Alcohol	.33 gal.	.90 gal.	172	
Oil, Engine	.1425 gal.	.225 gal.	58	
Oil, Cylinder	.23⅜ gal.	.24¼ gal.	4	
Oil, Fuel	.0425 gal.	.065 gal.	53	—Market price to-day 8c. gal., incr. 88%
Gasolene	.14 gal.	.21½ gal.	53	—Market price to-day 25c. gal., incr. 79%
Oats	.46 bu.	.93 bu.	102	
Corn Meal	1.645 cwt.	3.50 cwt.	113	
Motor Control and Lighting Equipment for Surface Cars	2,450.00	No purchase Market price $5,500.00	124	
Trailer Car Bodies and Trucks	Purchased 1915 $2,199.00	No purchase Market price $5,400.00	145	

APPENDIX D

On September 25, 1916, the Company presented to the Commission its case in a printed statement of eighty-three pages with five books of exhibits and various maps and charts. In its report and exhibits the Company undertook to place before the Commission every conceivable bit of information which they might desire, and said in conclusion: "It is of course not only possible but probable that the Commission will desire other information than that furnished and will desire some of the information in greater detail. In so far as the Commission desires such additional information or desires verification of any of the facts and figures, the Company remains subject to the direction of the Commission." In the presentation of its case the Company made no definite requests for specific remedies, but stated that its financial situation might be improved by different methods and submitted nine suggestions for the consideration of the Commission.

The Commission held a series of hearings at which all interested parties were invited to appear, and on February 1, 1917, reported to the Legislature in a statement entitled Senate 344, making nine recommendations, which included a suggested bill of six parts and which report was signed by the nineteen members of the Commission, one representative dissenting from the eighth recommendation which was the cancellation of the Compensation Tax. Senate Bill 344 was referred to the Committee on Metropolitan Affairs before whom seven days' hearings were held, the Company stating at that time that while they would be glad to see the report of the Recess Commission adopted they were firmly of the opinion that the bill was not a complete solution of the problem and that a six cent fare was inevitable.

The Committee on Metropolitan Affairs reported to the Senate, Bill 510, 14 to 1, striking out of the recommendation of the Recess Commission those portions of the bill which dealt with the purchase of the Eliot Square Terminal of the Cambridge Subway, and the provision for bodily transfer areas. The Senate then referred this bill to the Committee on Ways and Means, who reported same back unanimously, striking out those portions of the bill which provided for another investigation by the Transit Commission and the Public Service Commission and the substitution of other powers for those of the Transit Commission in case the Transit Commission should be abolished July 1, 1917.

The bill was then referred to the Committee on Ways and

Means in the House and reported back by them, again inserting the portion about bodily transfer areas.

Special Act 373 provided, among other things, in part V, "that the Public Service Commission may make such further investigation as it may deem necessary in order to determine whether or not the net income of the company may be increased by improved methods and practices" and that the "said Commission may expend for the purposes of such investigation a sum not exceeding $15,000 for which it shall be reimbursed by the Boston Elevated Railway Co. and the Public Service Commission shall report to the next general court on or before the first Monday in February whether Section 10 of Chapter 500 of the Acts of the year 1897 should be repealed." The Section thus referred to reads in part as follows:

"SECTION 10. Said corporation may establish and take a toll or fare, which shall not exceed the sum of five cents for a single continuous passage in the same general direction upon the roads owned, leased or operated by it; and this sum shall not be reduced by the Legislature during the period of twenty-five years, from and after the passage of this act; provided, however, that the board of railroad commissioners may upon the petition of the board of aldermen of a city, selectmen of a town, or fifty legal voters of a city or town, in which any of the lines owned, leased or operated by said corporation are located, after due notice and hearing the parties interested, reduce such toll or fare; **but such toll or fare shall not, without consent of said corporation, be so reduced as to yield, with all other earnings and income of said corporation except the income of the funds deposited with the Treasurer of the Commonwealth as required by this act and said chapter five hundred and forty-eight, a net divisible income, after paying all expenses of operation, interest, taxes, rentals and other lawful charges and after charging off a reasonable amount for depreciation, of less than eight per cent per annum on the outstanding capital stock of said corporation actually paid in in cash.**"

APPENDIX E

A very marked instance of that has been recently demonstrated in the issuance of a refund of $1,581,000 West End bonds. These bonds were to refund in part loans originally made in the years from 1900 to 1904 amounting to $4,743,000 carrying 4 per cent interest. The original bonds sold at a premium, the prices being from 104.69 to 101.536. They

came due two years ago and were refunded for periods of one, two, and three years at 5 per cent and sold at a premium. Last year the first year's portion came due and were again refunded at 5 per cent. This year the second year's portion came due on August 1 and it was necessary to refund them.

Bids were invited from thirty-one different reputable banking interests. Although the request read that the bonds would pay 6 per cent not a single banker made a bid. The lease did not permit the company to consider a bid at less than par and the bankers are unwilling to pay par for such bonds. It was necessary, therefore, for the company to go back to the Public Service Commission with a petition to be allowed to issue these bonds at not exceeding 7 per cent, and upon securing such approval and asking for bids three bids were received and the bonds were sold at 100.14, which is equivalent to paying nearly 7 per cent for the money.

It is an extremely uneconomical condition that requires bonds of a street railway serving such a territory as that served by the Boston Elevated to bear interest at 7 per cent.

It does absolutely no good to have a condition of this kind exist.

If the credit had been as good as it was several years ago and these bonds could have been reissued at about 4 per cent there would have been a saving to the car-rider of an amount equivalent to 3 per cent on $1,581,000, or $47,430 a year. When it becomes necessary to refund the balance of the original issue, unless conditions have changed, it will again be necessary to pay at least 7 per cent.

In other words, on the issue of about four million dollars' worth of what should be first-class A No. 1 securities the car-rider may have to pay 3 per cent more than if the company had good credit, which is equivalent to approximately $130,000 a year. This sum is absolutely wasted, so far as transportation is concerned.

APPENDIX F

Excerpt from American Telephone and Telegraph Company Annual Report, December 31, 1916, by Theodore N. Vail, president: "A question of growing importance arises out of the distinction between regulation and management. The power of the State to regulate is beyond question. It is just as well settled that this power is not broad enough to include the power to manage. This is something that inheres in the ownership of the property and belongs to the utility itself."

In the case of the Chicago, Milwaukee and St. Paul Railway the Court said, "The Company is entitled to the privilege of managing its business in its own way so long as it does not injuriously affect the health, comfort, safety and convenience of the public."*

In the Delaware and Hudson Company case the Court said: "This we think would be substituting the judgment and discretion of the commissioners for that of the directors and stockholders of the corporation. If such was the purpose and intent of the statute, a doubt might arise with reference to its constitutionality for ordinarily the ownership of property carries with it the right of occupancy and management and should a statute deprive the owner of the right to manage, it would, under ordinary circumstances, undermine his right to protect and make his property remunerative."

Further, the same Court in reviewing an order of the Commission stated: "The discretion of a public service commission cannot over-ride the discretion of the officers of a corporation in the management of its affairs."

Further, in the case of the Boston and Maine Railroad the Court said in part: "With regulation obtruding itself into the place of management, capital will recede from the channels of public service, and the industries most useful to the people at large will dwindle for the incentives to the development, extension and skilful operation of those branches of business which can be said to be affected with a public interest will in a great measure be removed.

"But this does not mean that the commission can do whatever a railway company can do, that the Legislature has undertaken to substitute the board of commissioners for the company's board of directors or to confer upon the former the proper functions of the latter."

APPENDIX G

Mr. Harlan stated in part:

"It became necessary, in order that some affirmative results might follow from this extended and laborious investigation, that I should concur in the course outlined in the Commission's report. I did this, however, because its findings are in the direction of what the record seems to me to justify and require and not because I regard the relief granted as adequate. . . .

*This and subsequent quotations were taken from the "Brief of Hon. Frederick W. Lehmann, in St. Louis Rate Case." They appear in an extract published by the Legal Department of the American Telephone and Telegraph Company. (See Appendix F.)

"For seven or eight years competent railroad officials have been warning us that the carriers are not keeping abreast of the requirements of the country. . . . A rough estimate of a billion dollars has been suggested as the yearly expenditure necessary to enable them to open up new territory and to enlarge and extend their present facilities in order to meet the rapidly growing volume of the general commerce of the country.

"No such investment, however, has been or is being made in our railroads. On the contrary, an exhibit of record shows that beginning with 1895 the new construction increased year by year until 1910, while from the latter date it has steadily diminished. In other words, our population and commerce have largely expanded, but there has been no expansion, relatively speaking, in our transportation facilities.

"It will suffice to say that, while the strains of the war have much to do with the present transportation conditions, the one outstanding fact during the hearing, as to which there was no disagreement was that our transportation system is lacking in the capacity to meet the demands of the shippers and that the resulting loss to the general public has been very large.

"This condition is one of present danger, with a possibility that it may even become disastrous during the war period. But aside from this military influence, the record leaves no doubt that our transportation system, as a whole, must be promptly enlarged and expanded.

"The shippers of the country recognize the danger and have given expression to this apprehension upon the record. They regard a prompt and sound cure of the trouble as being as vital to them as to the carriers."

